

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1997 SESSION

FILED

June 30, 1997

**Cecil W. Crowson
Appellate Court Clerk**

STATE OF TENNESSEE,

Appellee,

VS.

SHARON J. BELL, a.k.a.
SHIRLEY BELL

Appellant.

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C.C.A. # 01C01-9603-CC-00107

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DICKSON COUNTY

*

Honorable Robert E. Burch, Judge

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(Aggravated Assault)

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For Appellant:

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Sharon Bell, was convicted of aggravated assault.

Because the jury verdict did not indicate whether the defendant was guilty of Class C or Class D assault, the trial judge entered judgment for Class D aggravated assault and sentenced the defendant to two years in the workhouse. All but six months was suspended. The defendant is eligible for work release.

The sole issue on appeal is whether the trial court erred by denying full probation. We affirm the judgment of the trial court.

Although the defendant has not contested the sufficiency of the evidence, a brief overview of the facts may be helpful to assess the appropriateness of the sentence. The victim, Pam Case, testified that on October 26, 1994, as she arrived for work, the defendant approached the car in which she was a back seat passenger and pointed her finger disapprovingly at another occupant of the vehicle, James Grimes. The defendant then saw the victim, opened the back door of the car, and attacked her. After a time, Grimes pulled the defendant away from the victim so as to allow the victim to walk to her workplace. At that point, the victim realized she had been cut on her inner thigh. Her pants had been slashed and her boot was filling with blood; "my whole leg was just wide open, filleted" The victim called 911 and was transported to the hospital; it took fifty-five to seventy stitches to close the wound. The victim never saw any type of weapon on the defendant.

None of the witnesses could testify that they saw a weapon. The victim, however, remembered that she had a box cutter in her possession that she was required to use in her job. The box cutter was taped inside a folder in the car at the time of the attack. Grimes testified that he had ended a romantic relationship with the defendant and was involved with the victim at the time of trial.

At the sentencing hearing, Vicki Ward, who was responsible for preparing the presentence report, testified that the defendant had never been in trouble with the law before. She reported that the defendant, who had been cooperative with her investigation, had admitted to fighting with the victim but denied cutting her.

The victim was unable to continue work immediately after the injury and lost her job. She testified that her scar was eight to nine inches long, that her leg "still looks bad," and that she could no longer work as a waitress because of her injury. She described the assault as an "ambush."

A character witness, June McDonough, testified that she had known the defendant since she was four or five years old. She described her as a hard worker and active in her church. She insisted the incident was out of character and contended that the defendant was not a threat to society. A co-worker at Green Valley Nursing Home for two-and-a-half years rated the defendant very high as an employee.

The defendant testified that she worked five days a week, seven and a half hours a day, and made \$6.25 an hour. She contended that she was the sole supporter for a granddaughter, a great granddaughter, her niece and a great niece, all of whom lived at her residence. A certified nursing assistant, the defendant had been employed at Green Valley for eight years and had been in the health care profession for over thirty years. The defendant acknowledged her guilt "for fighting" but maintained the victim was the first aggressor. She insisted that she did not know how the victim was cut and that she did not have a knife or razor in her possession.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a de novo review with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The Sentencing Commission Comments provide that the burden is on the defendant to show the impropriety of the sentence.

Our review requires an analysis of (1) the evidence, if any, received at the trial and sentencing hearing; (2) the presentence report; (3) the principles of sentencing and the arguments of counsel relative to sentencing alternatives; (4) the nature and characteristics of the offense; (5) any mitigating or enhancing factors; (6) any statements made by the defendant in his own behalf; and (7) the defendant's potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-102, -103, and -210; State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987).

Among the factors applicable to the defendant's application for probation are the circumstances of the offense, the defendant's criminal record, social history, and present condition, and the deterrent effect upon and best interest of the defendant and the public. State v. Gear, 568 S.W.2d 285, 286 (Tenn. 1978).

Especially mitigated or standard offenders convicted of Class C, D, or E felonies are presumed to be favorable candidates "for alternative sentencing options in the absence of evidence to the contrary." Tenn. Code Ann. § 40-35-102(6). With certain statutory exceptions, none of which apply here, probation must be automatically considered by the trial court if the sentence imposed is eight years or less. Tenn. Code Ann. § 40-35-303(a), (b).

Alternative sentencing issues must be determined by the facts and circumstances of the individual case. State v. Moss, 727 S.W.2d 229, 235 (Tenn. 1986). "[E]ach case must be bottomed upon its own facts." State v. Taylor, 744 S.W.2d 919, 922 (Tenn. Crim. App. 1987).

The trial court found that the victim has suffered a "serious, disfiguring injury" and denied full probation in order to avoid depreciating the seriousness of the offense. See Tenn. Code Ann. § 40-35-103(1)(B). For the denial of an alternative sentence on that basis, "the circumstances of the offense as committed must be especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree,' and the nature of the offense must outweigh all factors favoring a sentence other than confinement." State v. Bingham, 910 S.W.2d 448, 454 (Tenn. Crim. App. 1995) (quoting State v. Hartley, 818 S.W.2d 370, 374-75 (Tenn. Crim. App. 1991)). Here, the defendant attacked the victim as she sat in the back seat of a car. The assault continued until Grimes pulled the defendant away. There was no evidence of provocation. Thus, the circumstances of the offense support the conclusion of the trial court. Moreover, the defendant has failed to accept full responsibility for her actions. Despite overwhelming evidence to the contrary, the defendant insists the victim attacked her. Lack of candor has traditionally been a valid reason for the denial of probation. State v. Poe, 614 S.W.2d 403 (Tenn. Crim. App. 1981). "The opportunity for probation is always enhanced by the acceptance of responsibility in the honest recitation of both the facts underlying the offense and the circumstances under which the crime was committed." State v. Michelle Westfield, No. 03C01-9604-CC-00159, slip op. at 5 (Tenn. Crim. App., at Knoxville, Mar. 4, 1997). Under these circumstances, we cannot conclude the trial court erred by ordering a period of confinement.

Accordingly, the judgment of the trial court is affirmed.

Gary R. Wade, Judge

CONCUR:

David G. Hayes, Judge

Curwood Witt, Judge